



EMPLOYMENT TRIBUNALS

Claimant: Mrs N Williams

Respondent: Boots Management Services Ltd

Heard at: Shire Hall, Llangefni
On: 2, 3 and 4 April 2019 and in chambers on 17 May 2019

Before: Employment Judge S Davies
Ms L Thomas
Mr M Pearson

Representation

Claimant: Mr G Pollitt, counsel
Respondent: Mr P Keith, counsel

RESERVED JUDGMENT

It is the unanimous decision of the Employment Tribunal that:

1. the claim of constructive unfair dismissal is upheld;
2. the Respondent discriminated against the Claimant contrary to section 15 Equality Act 2010 (EQA) by issuing a PIP (performance improvement plan) on 30 September 2016;
3. the Respondent failed to make reasonable adjustments for the Claimant by:
 - a. failing to allow her to have tea breaks during the working day;
 - b. failing to discount as sick leave a disability related absence after 3 July 2016; and
 - c. failing to ensure a manageable workload between June and September 2016.
4. all other complaints are dismissed.

REASONS

Claims

1. The claims brought, by claim form dated 5 December 2017, are of constructive dismissal and disability discrimination (discrimination arising from disability – section 15 EQA, failure to make reasonable adjustments – section 21 EQA and harassment – section 26 EQA).
2. ACAS early conciliation commenced on 24 October 2017 and a conciliation certificate was issued on 8 November 2017.

Withdrawal

3. The Claimant withdrew a complaint of discrimination arising from disability in respect of a failure to carry out a work place risk assessment, which complaint is accordingly dismissed.

Amendment applications by both parties

4. The parties' joint application to amend, as recorded in an amended list of issues presented at the start of day two of the hearing, was granted.
5. The amendments granted clarified the Claimant's section 15 complaint to specify the "something" arising from disability and the substantial disadvantage experienced in respect of PCPs in the section 21 complaints.
6. The Respondent's amendment clarified the justification defence relied upon in respect of the section 15 complaint.

Disability

7. The Respondent conceded that the Claimant was a disabled person due to scoliosis of her spine.

Issues

8. The hearing was listed to deal with the question of liability only.
9. The agreed amended list of issues is attached as Annexe A to this judgment.

Concessions

10. The following matters were conceded (references are to paragraph numbers in the amended list of issues):

Section 15

8) The Claimant concedes the legitimate aim relied upon by the Respondent but disputes that the Respondent can rely on justification as it failed to adopt a proportionate means.

Section 21

13a) the Respondent accepts that it applied the PCP of requiring employees to come in 30 minutes later or leave 30 minutes earlier in lieu of breaks/not allowing tea breaks during the working day.

13b) the Respondent accepts that it applied the PCP of the absence management procedure.

14b) the Respondent accepts that the Claimant's disability meant that she was more likely to have sickness absence and therefore more likely to be given a warning under the procedure and therefore experience substantial disadvantage.

13 b) and 18c) the Claimant accepts that she was not issued with a formal absence warning following a period of disability-related absence in July 2016

Hearing

11. The hearing venue was inadequate, and the parties' views were sought at the outset of the hearing as to whether the case should proceed. The Tribunal agreed to conduct the hearing as the parties were keen to proceed despite the poor facilities. The parties were thanked for their pragmatism in the circumstances.
12. The Tribunal heard live evidence from the Claimant. The Claimant presented written statements from four former colleagues: Linda Thomas, Gwyneth Douth, Wendy Williams and Julie McMullen. These witnesses for the Claimant remain employed by the Respondent and did not attend the Tribunal hearing, accordingly the Tribunal placed little weight on their evidence.
13. For the Respondent, the Tribunal heard from Amy Wilber, Store Manager, Sara Creighton, Store Manager and Emma Hodnett, Store Manager. Ms Wilber is currently on maternity leave and the Tribunal agreed to hear her evidence at a time to accommodate her availability. No other adjustments were sought by any parties or witnesses.
14. The parties presented an agreed bundle in excess of 300 pages which was supplemented by additional documents from the Respondent: R1 (a stress risk assessment performed by Ms Wilber in respect of the Claimant on 9 February 2016) and R2 (a weekly pharmacy detail report for the first six weeks of the financial year to 15 October 2016) produced by Ms Creighton.
15. Prior to the hearing, Employment Judge S Davies directed that the parties produce an agreed timetable for the hearing, which they did by email of 29 March 2019. This timetable was adhered to, with evidence and

submissions concluding on day 3. Both parties provided written submissions, supplemented by oral submissions.

16. The hearing was originally listed for four days but the Tribunal was unable to sit on day 4; due to the unsuitability of the hearing venue and the Employment Judge became unwell. Judgment was reserved and considered at a Chambers meeting on 17 May 2019 (the first available date).

Summary of the case

17. The claim is about the way in which the Respondent managed the Claimant, who has a chronic condition, in circumstances where the pharmacy where she worked was placed in 'special measures' and a new manager brought in following a period without any store manager. Following the issuance of a PIP by the new manager, the Claimant was signed off on sickness absence and raised a grievance. The Claimant never returned to work and resigned in circumstances where she says her grievance was not properly dealt with.

Background facts

18. The Claimant was a long serving employee of the Respondent, commencing employment on 19 November 1984. The Claimant progressed to the position of Accuracy Checking Pharmacy Technician (ACPT), which role she held in the Holyhead pharmacy at the point of her resignation.
19. The contract of employment is dated 17 February 2012; the Claimant was an hourly paid member of staff [42-3]. The Claimant worked a 28 hour per week contract but during the material period regularly worked overtime in excess of 28 hours per week, including on her scheduled days off.
20. The Claimant's disciplinary record was exemplary, and she was awarded bonus and received 'performing' appraisals from her line manager prior to Ms Wilber.

Disability

21. In May 2012 the Claimant was diagnosed with scoliosis of the spine. The Claimant's impact statement details the effect of this progressive lifelong condition, which includes constant pain, stiffness and muscle fatigue when the Claimant stands for long periods of time with little movement. The Claimant has a curvature of her spine and overdevelopment of muscles on one side leading to a slight hunch.
22. The impact on the Claimant's ability to carry out day-to-day activities includes restrictions on her ability to carry out tasks for which she has to stand for a long period of time. The Claimant is able to drive but is restricted to short distances due to the pain experienced when she sits for a long period of time.
23. The symptoms subside when the Claimant is able to sit and rest up at

various times throughout the day, but she cannot be in one position for a long period of time. This is particularly when she finds the pain too much to carry on with day-to-day activities. The Claimant finds that general movement throughout the day helps ease her symptoms by stretching her muscles and avoiding stiffness. If in pain the Claimant takes paracetamol and rests.

24. The Claimant says that she noticed her symptoms getting progressively worse when daily tea breaks were removed at work and when other pressures were placed on her, such as an increased workload as a result of short staffing levels and additional duties to include training new members of the team as a result of special measures. The Claimant asserts that she had no support to accommodate her condition and the pain would become unbearable.
25. Following attending a residential rehabilitation centre, the Claimant says she identified the need for adjustments to be made to her role such as a possible change in working hours / pattern and to reinstate daily breaks. The Claimant believed that adjustments would have allowed her to manage her pain in the workplace.

Respondent's knowledge of back condition

26. The Claimant's unchallenged evidence was that she informed the pharmacist and her previous store manager about her back problems prior to Ms Wilber starting as manager in Holyhead (para 13 Claimant's witness statement and clarified in questions from Tribunal member). Ms Wilber's evidence is that she was first aware of the Claimant's scoliosis from June 2016 when the claimant asked to attend the residential rehabilitation course.
27. The Claimant says at one point Ms Wilber commented that she was aware of the condition as she had a cousin with the same condition. OH confirmed the diagnosis of scoliosis in a report of 27 June 2016 [100]. The Claimant's diary notes [75f] suggest that Ms Wilber made the comment about her cousin on the same day that the Claimant spoke with OH. On the balance of probabilities, the Tribunal concludes that the comment about Ms Wilber's cousin was not made on the first occasion she was informed about the Claimant's back problems. Ms Wilber referred the Claimant to OH when she sought permission to attend the rehabilitation course; Ms Wilber must have been informed about the claimant's back problems prior to 27 June 2016, when the OH appointment took place.
28. One of the Claimant's colleagues in the upstairs pharmacy in Holyhead had adjustments in place for her back issues, of which the Claimant was aware. Awareness of what the Respondent was prepared to offer a colleague makes it more likely than not that the claimant did raise issues with her back with Ms Wilber prior to June 2016, particularly after her tea breaks were removed.
29. The Tribunal concludes that the Claimant made Ms Wilber aware of her back condition prior to June 2016; (para 36 Claimant's witness statement). She may not have referred to scoliosis, but the Tribunal is

satisfied that the Claimant told Ms Wilber she wanted a workplace assessment because of her back problems prior to June 2016.

Holyhead pharmacy

30. The Holyhead pharmacy had two dispensaries; 'upstairs' which dealt with walk-in prescription requests and 'downstairs' which dealt with prescriptions for local care homes, including preparation of DDS packs. The Claimant worked primarily downstairs but was frequently called upon to assist in the upstairs dispensary.
31. The Claimant previously worked under a store manager, Natalia, who left the store in or around August 2015. After Natalia left, there followed a period where there was no store manager at Holyhead. Ms Wilber joined on a temporary basis in January 2016 and was made permanent store manager in April 2016.
32. The store was experiencing difficulties in 2015/2016 and had been categorised as "high-risk", which the Claimant described as being placed in "special measures". The categorisation of the store as high-risk related to failed audits and failings in standard operating procedures and meant the store was able to utilise additional staff over headcount in order to rectify the process issues.
33. The Claimant described having a heavy workload which was exacerbated by the store pharmacist being newly qualified and requiring a significant amount of support from the Claimant. When Ms Wilber first started as temporary store manager, the Claimant experienced a two-week period of absence due to stress. Ms Wilber performed a stress risk assessment upon the Claimant's return to work (R1).
34. Ms Wilber encouraged staff at the store to achieve targets for patients to sign up for repeat prescriptions. Repeat prescriptions produce efficiencies for the Respondent in that the process is streamlined because information is retained by the Respondent on their computer systems and pre-ordering of medicines can be made in a planned and timely fashion. On a logical basis, we accept the Claimant's evidence that increased numbers of individual patients signed up for repeat prescriptions increased the overall volume of work within the pharmacy.

Tea breaks

35. Staff in the store had a long-standing practice of taking mid-morning and mid-afternoon tea breaks (15 minutes each). Ms Wilber decided to remove tea breaks in or around April 2016 and instead told staff that they should attend work 30 minutes later or leave 30 minutes earlier in the day. The Tribunal finds that this change was implemented without consultation with the staff. Ms Wilber's own evidence confirmed that there was no meaningful consultation with staff. The change appears to have been introduced on the basis of Ms Wilber's understanding of the breaks that staff are entitled to depending on the length of their shift. Ms Wilber accepts that she put up a notice to the effect that tea breaks were removed (paragraph 21 Claimant's witness statement). As there was no

individual or collective discussion, Ms Wilber confirmed that when removing the breaks she did not discuss with the Claimant how this might impact her personally. The claimant's grievance in this regard was upheld.

Rehabilitation course

36. The Claimant's husband is a firefighter and the Claimant became aware of a facility offered to firefighters and their families to attend an intense physiotherapy course in the Lake District. The Claimant approached Ms Wilber in June 2016 for permission to attend the residential course over 2 weeks and in response Ms Wilber referred the Claimant to a telephone assessment with Colleague Health (OH).

37. OH produced a report dated 27 June 2016 [100-101] which recorded the Claimant's desire to attend the rehabilitation course. OH report contains the following:

“Natalie is currently working she explained that this is without the need for any adjustments or restrictions to her role as an ACPT”

38. The Claimant disputes that this accurately records what she said, as well as the meaning placed on this sentence by the Respondent; the Claimant asserts that she told OH that she had not been provided with any adjustments. This assertion is accepted by the Tribunal; it is supported by the fact that the OH report goes on to refer to what the Claimant said about her work station.

39. The OH report continues:

“Natalie wants to obtain additional advice about how to manage her symptoms and is hoping that the rehabilitation course will provide this for her.

In my opinion Natalie is well enough for her job. She is currently at work and this is without any adjustments or restrictions.

Natalie asked me about her work station and if this is okay. Her role involves prolonged standing, which she feels makes her current symptoms worse. It is important to individuals that steps are taken at work to ensure that workstations and equipment are optimised as far as reasonably practicable. I am not sure what facility there is for on-site assessment over and above an assessment undertaken by the individual and their manager. Advice may be available from health and safety in this regard.”

Return to work meeting

40. The Claimant attended the rehabilitation course between 3 and 15 July 2016. Upon her return to work she met with Ms Wilber who informed her that attendance at the course would be recorded as sickness absence and that the Claimant should obtain a fit note from her GP. There had been no discussion prior to the Claimant attending the rehabilitation course about how the absence would be recorded or the need for a fit note.

41. The return to work interview took place on 22 July 2016 [106-108] and in the minutes completed by Ms Wilber she notes:

“sometimes standing for long periods of time makes the back pain sometimes (sic). Following colleague health review no adjustments needed at work at the moment is fine to carry on with the role”

“feels can do her work needs to move around more and have breaks instead of standing in one prolonged position”

In response to the question: ‘do you feel you need any other immediate support to do your work?’ [107], Ms Wilber records “if possible to look at occupational health visit in current workplace”.

42. Ms Wilber accepts that no adjustments were implemented for the Claimant in terms of breaks and no assessment of the Claimant’s workstation was carried out whilst she was in work. Ms Wilber’s witness statement suggests that no assessment took place due to unavailability on holiday and diary commitments (paragraph 11); this is not accurate. Ms Wilber accepted in cross-examination, that she never attempted to arrange the occupational health visit. The Claimant’s diary notes refer to her asking ‘if she had sorted the risk assessment’ and Ms Wilber responding that ‘she didn’t know how to do it and would check with HR’ [75g]. The Claimant asked Ms Wilber about arranging the risk assessment on a number of occasions (paragraph 37, 41, 42 and 51 witness statement and pages 75G, 75 CC, 117 and 121). The Tribunal finds that the Respondent took no steps to arrange a workplace assessment whilst the Claimant was in work despite her requests.

43. There is a conflict of evidence about what was said at the return to work meeting about the absence management procedure and triggers. The Claimant had had two periods of sickness absence during 2016 and under the procedure a third period of absence would trigger the first stage of the process. The Claimant described receiving a ‘warning’ that further absence would result in formal action under the procedure [75g] but it is accepted that this conversation did not constitute a formal warning. Ms Wilber’s account is that she talked the Claimant through the absence procedure and triggers. The Tribunal finds the Claimant perceived Ms Wilber’s comment as a warning but what was said did not form part of the formal process.

44. Ms Wilber handed the Claimant a handwritten note during the return to work meeting headed “my expectations as of today 22 July 2016” [75I]. The note consisted of bullet points including “professionalism – research what the word means and begin to practice within your role (lead by example)”. Ms Wilber explained that at a Respondent leadership course it was indicated that staff should look up the word ‘professionalism’ and try to embody it, and that she was cascading this to the Claimant. Ms Wilber did not explain this context to the Claimant when she handed her the note. The Claimant perceived the content of the note negatively.

Workload

45. The Tribunal accepts the Claimant's unchallenged evidence that she came into work on her days off and frequently worked additional hours in order to complete her workload. Ms Wilber indicated that such overtime was recorded either to be paid or as time off in lieu. Ms Wilber conceded that the pharmacy was busy, and it was not always possible to facilitate time off in lieu until additional staff were brought in.
46. The Tribunal finds that the Claimant did experience an increased workload in the months leading up to the issuance of the PIP / her sickness absence. The increase of work was recorded by the Claimant contemporaneously in her personal notebooks. The increasing workload was due to a number of factors; the Respondent's targets for customers to sign up for repeat prescriptions leading to an increase in the volume of work (para 23, 24, 26, 30, 32 Claimant's witness statement and page 75a and c and 120); the Claimant's personal workload in terms of training up new dispensers and assisting the newly qualified pharmacist [75l,n,z], the change in working pattern due to the removal of tea breaks which meant that the Claimant was unable to give team briefings until all staff had arrived. At times the Claimant reported the pharmacists were concerned that the operation of the pharmacy was not safe and that the store might need to be closed [75v].

Claimant's contract

47. Although it does not appear in her witness statement, the Claimant asserted in her grievance [117] that Ms Wilber had agreed to an increase in her 28 hour contract to 30 hours following the removal of tea breaks. This change was never implemented.
48. Ms Wilber refers to this allegation at paragraph 20 of her witness statement and was cross examined on the issue; she disputes that a promise was made to increase the hour of the Claimant's contract.
49. The Tribunal finds, on the balance of probabilities and having reviewed the contemporaneous documentation which refers to Ms Wilber agreeing the increase [117, 176, 193], that Ms Wilber did assure the Claimant that her contract would be increased to 30 hours per week; this assertion seems more likely than not in light of the removal of tea breaks, which led to the Claimant working for additional hours on an unpaid basis and without being offered time off in lieu.

E-learning

50. In the time running up to the issuance of the PIP, the Holyhead store had no training time allocated for staff to complete online e-learning during working hours, which was a requirement of the Respondent.
51. The Respondent had updated the ACPT role so that had more focus on leadership. This change in role was supported by new e-learning, which the Claimant was unable to complete as no time was made available to her in which to do so [75 HH].

Roaming ACPT

52. In or around early September 2016, Ms Wilber asked the Claimant to consider taking a relief ACPT role (although not in Claimant's witness statement this is an agreed fact and referred to in the grievance at page 119). This conversation took place just prior to the Claimant going on leave for a couple of weeks.
53. The Claimant rejected the suggestion noting that she could not drive for long periods [75X-Y]. When Ms Wilber again asked her to consider the role over her holiday, the Claimant said she did not need time to consider and did not want the role.
54. There is a dispute as to the precise words used, but it is agreed that what happened next is that Ms Wilber indicated that she would issue the Claimant with a PIP when she returned from holiday. The Tribunal finds on the balance of probabilities that Ms Wilber used words to the effect "in that case on your return, I am going to put you on a PIP". We reach this conclusion on the basis that these are the words recorded in the grievance drafted only two weeks later and they tally with the sequence of events accepted by Ms Wilber [119, 153].

PIP

55. The Claimant was not immediately placed on a PIP upon her return from holiday. Instead the PIP was issued on 30 September 2016, when the Claimant had attended work on a day off to help out with workload [119 and 75CC – there is reference to this being 1 October 2016, but we find that the Claimant is referring to the same date the PIP was issued]. The Claimant had no advance notice that a meeting would be convened to issue the PIP. Ms Wilber issued the PIP [109-110] already prewritten. Ms Wilber acknowledges that this was a breach of the Respondent's internal process and that PIPs should be completed in collaboration with the employee concerned.
56. The Tribunal concludes that there were a number of reasons for issuing the PIP; Ms Wilber was trying to encourage the Claimant to step up to the requirements of the new ACPT role by identifying what she perceived to be lack of performance in respect of leadership, time management and pharmacy operations and efficiency [110]. During the grievance investigation Ms Wilber was asked to explain the reason for the PIP and responded "'leading' upstairs and ACT role – time and speed – talked about splitting time upstairs and down to help her in her role" [203a]. The Tribunal finds that Ms Wilber perceived Claimant to be slow in her work; this is implicit in her criticism of the Claimant's time management and efficiency in the PIP document and explicit in her responses during the grievance meeting.
57. The Claimant asserts that upon leaving the office following the issuance of the PIP Ms Wilber remarked "here is good training package for you – how to control your emotions, I think you should do it" [120]. Ms Wilber accepts that she referred the Claimant to the e-learning leadership package

available to staff (para 22 of her witness statement). This comment is asserted to have been made within the context of a discussion about how Ms Wilber was strong, despite having lost her mother an early age. In this context, the Tribunal concludes that the comment was made by Ms Wilber.

58. The PIP was issued immediately prior to the Claimant going on one weeks' leave, thereby reducing the time available to complete what was required (the PIP was time-limited to an eight week period). The Claimant was subsequently unable to go away on holiday as she was too upset and instead obtained a fit note from her GP signing her off work for four weeks, initially. The Claimant never returned to work.

Grievance

59. The Claimant issued a 6 page grievance [116-121] dated 14 October 2016. In it the Claimant complains about Ms Wilber's management of her, workload, lack of support, the failure to acknowledge and accommodate her disability, lack of workplace assessment and the issuance of the PIP.

60. The grievance was acknowledged by the area manager, Vincent Evans [125]. The Claimant's husband contacted Mr Evans prior to the issuance of the grievance to raise his concerns about the impact of events on the Claimant and her mental health.

61. Initially the Claimant's point of contact during sickness absence was Ms Wilber but the Respondent subsequently acknowledged in light of the grievance this was inappropriate and contact was then maintained with assistant manager, Sharon Davies.

62. There was some confusion as to the purpose of meetings arranged during the Claimant's absence [152 and 172]; the Claimant believed that a meeting was arranged to deal with her grievance when in fact it was to keep in touch while she was absent. An attempt was made to arrange a grievance meeting during December 2016 [132] but due to both parties' unavailability it was not possible.

63. A support meeting was held with the Claimant on 24 January 2017 with Ms Davies and Philip Mulholland, store manager [134-136]. Mr Mulholland sent a follow-up letter to the Claimant on 25 January 2017 [137-9] (the letter is incorrectly dated 2016). It is evident from the content of that letter that matters related to the grievance as well as the Claimant's medical condition were discussed. The letter records the Claimant saying that she felt moving about was better than standing still in one place for too long and breaks helped with regard to her back condition. Mr Mulholland indicated that he had spoken to Ms Wilber and she was willing to restore breaks upon the Claimant's return to work and would be planning in training time "now that the store is better resourced" [138]. The Claimant responded to this letter on 3 February 2017 [152-154] in which she sought to correct the Respondent's record of the meeting. The Claimant emphasised that her condition was part of a 'culmination of factors into my absence' [153].

64. Mr Evans wrote to the Claimant on 23 February 2017 with regard to a

grievance meeting [164]. The Claimant responded on 13 March 2017 [172] adding a complaint with regard to Mr Evans's 'lack of action' in response to the grievance that had 'dragged out over five months'. The Claimant also chased Ms Davies to arrange a grievance meeting by email of 9 March 2017 [170]. Ms Davies forwarded the email of 9 March to Mr Evans the following day but due to Mr Evans absence on leave, he did not respond until 21 March 2017. It is not clear why steps could not have been taken in the period 9 to 21 March to progress matters in Mr Evans absence, particularly since he did not deal with the grievance himself.

65. Ms Hodnett was appointed as the grievance officer and the Claimant invited to a meeting on 7 April 2017 by letter of 22 March 2017 [184]. Due to unavailability the grievance meeting did not proceed until 12 April 2017. Following the meeting Ms Hodnett interviewed Mr Evans, Ms Wilber and Ms Davies [200-210]; all interviews took place by telephone on 12 May 2017. The interviews with Mr Evans and Ms Davies were brief. Mr Evans was not involved in day-to-day matters at the Holyhead store and was asked questions about delay in the grievance process; when questioned he made no reference to the delay in dealing with correspondence in March due to his leave. In interview, Ms Davies conceded that staff at Holyhead had been 'under pressure' but that had been remedied by bringing in new staff [209].
66. The Claimant chased the outcome of the grievance to Ms Davies [215]; who in turn chased Mr Evans pointing out the Claimant have been 'waiting 10 months'. Ms Hodnett's grievance outcome was communicated by letter dated 3 July 2017 [216-221] which upheld the grievance in part. Ms Hodnett found:
- in respect of the removal of tea breaks: 'I do not however believe your welfare and health was considered during this process' [218];
- 'it was not the correct decision to issue you with an absence warning after you have been granted leave to attend your appointment. I do feel that by Amy choosing to do this it would have caused you considerable concern, I can see why you would deem this a bullying tactic. I therefore uphold this aspect of your grievance.' [218] (the Tribunal notes that this was not a formal warning);
- 'I do note however that your store manager did not pass her firewall which in turn meant she could not support you with checking as she had previously agreed' [218]
- 'I have reviewed the PIP and taking into account the content and timing of this issue, I do not feel the PIP contained SMART actions and feel the timing of issue was inappropriate.' [220];
67. Ms Hodnett also partially upheld the grievance with regard to Ms Wilber's behaviour towards the Claimant including comments but was not specific as to which parts were upheld [220].
68. In the recommendations Ms Hodnett states "I believe there are clear learnings for Amy Wilber and that she would benefit from further

training.... I will be giving Amy feedback with regards to the quality and issuing of the PIP. I understand PIPs can be very beneficial for the individual and the business, but they must be used in the correct way and I do not feel this has been the case.'

69. Once she was assigned to deal with it, the Tribunal considers that Ms Hodnett attempted to deal with the grievance properly, however there were significant delays on top of those by Mr Evans: of a month, in progressing the grievance investigation to interview managers and then after interviews almost 2 months to outcome letter. This delay was explained as being due to seeking advice arising from the complexity of the grievance.

Occupational health

70. Pending her grievance hearing and whilst absent, the Claimant was referred again to OH for a report dated 17 February 2017 [160-161]. The report advised an individual stress risk assessment and also states:

'On a slightly different note; Dr Murphy, in a previous report recommended a workstation assessment on Natalie due to her spinal condition; Natalie informed me that this has not yet been addressed; may I respectfully ask this to be a priority upon her return to work – this will ensure that her existing musculoskeletal condition is not compromised.'

Resignation

71. Following receipt of the grievance outcome the Claimant resigned by way of letter dated 2 August 2017 [225-6]. The Claimant stated that she felt she had no choice but to resign in light of recent experiences and the way she had been treated. The Claimant was unhappy with the way in which the grievance was handled stating that she felt all avenues had not been explored and the individuals she identified who could provide information and documentation to support her concerns were not spoken to as part of the grievance investigation.
72. The Respondent acknowledged the resignation letter, by letter of 8 August 2017 [227]; offering a cooling off period of five working days and an appeal. The Claimant responded by letter of 14 August 2017 [228-231] providing clarification of her position and concluding "raising an appeal to the initial findings, in the limited timeframe you provided would only have extended the situation for a further considerable amount of time based on my previous experiences with you, further adding to my stress, anxiety and wellbeing."
73. The Respondent interpreted the Claimant's response as request for an appeal, which was arranged with Ms Creighton to be held on 4 September 2017 [232-3]. The meeting was eventually held on 15 September 2017 and attended by the Claimant together with a trade union representative. It is clear that there was a misunderstanding as to the purpose of the meeting as recorded in the minutes [235] with the Claimant stipulating that she had not asked for an appeal. Nevertheless, once the matter had been

discussed the Claimant elected to proceed with the appeal meeting and the outcome was issued on 14 October 2017 [247-249].

74. Ms Creighton did not interview any additional staff prior to the appeal outcome, speaking only to Ms Davies again [243] and concluding that Ms Hodnett interviewing only Ms Wilber and Ms Davies [249] with regard to the Claimant's workload was an appropriate approach. Ms Creighton reviewed store management information data (R2) and used it to suggest that there was a decrease in the level of work in store. The Tribunal does not consider that the data relied on by Ms Creighton illustrates the point she sought to make; the data related to a narrow period of six weeks (including two weeks whilst the Claimant was absent on sick leave) and the Claimant was not offered the opportunity to comment on the data at the appeal meeting or prior to the issuance of the appeal outcome.

Respondent's policies and procedures

75. The Respondent's Handbook [44-75] covers the following:

Payment for overtime worked [52]: 'you will, of course, receive either payment or time off in lieu of additional hours worked.'

Stress at work [63]: 'we want our employees to feel their able to cope with what they are asked to do'

Performance improvement plans [66]: 'if your level of job performance falls below the standards we expect your manager will discuss this with you informally and together you will agree a plan of action to help you improve your performance. If after informal reviews your performance is still below the standards we expect, formal action may be taken'

Grievance [71]: the document in the bundle does not include the process for employees to follow when raising formal grievances (it appears that only part of the section on grievance has been included in the bundle)

Law

76. The Tribunal referred to the following legislative provisions; sections 95 and 98 Employment Rights Act 1996 (ERA); sections 15, 20, 21, 26, 123 and 136 EQA.

77. Counsel provided detailed written and oral submissions which are not repeated; there was no relevant issue of disagreement on the law and we summarise the tests applied below.

Constructive dismissal

78. The Tribunal must consider whether there was a fundamental breach of contract. When considering the implied term of trust and confidence, breach can be demonstrated by a series of events culminating in a last straw. The last straw does not need to be a breach of contract in itself but must add something to the events that preceded it.

79. The Tribunal must also be persuaded that the breach of contract relied upon was an effective cause of dismissal and that the Claimant has not affirmed the breach.

Discrimination arising from disability

80. As for the correct approach when determining section 15 EQA claims we refer to **Pnaiser v NHS England and others UKEAT/0137/15/LA** at paragraph 31. The relevant steps to follow are summarised as follows:

- a. the Tribunal must identify whether there was unfavourable treatment and by whom – no question of comparison arises;
- b. the Tribunal must determine the cause of the treatment, which involves examination of conscious or unconscious thought processes. There may be more than one reason but the “something” must have a significant or more than trivial influence so as to amount to an effective reason for the unfavourable treatment;
- c. motive is irrelevant when considering the reason for treatment;
- d. the Tribunal must determine whether the reason is “something arising in consequence of disability”; the causal link between the something that causes unfavourable treatment and disability may include more than one link – a question of fact to be assessed robustly;
- e. the more links in the chain between disability and the reason for treatment, the harder it is likely to be able to establish the requisite connection as a matter of fact;
- f. this stage of the causation test involves objective questions and does not depend on thought processes of the alleged discriminator;
- g. knowledge is required of the disability only, section 15 (2) does not extend to requirement of knowledge that the “something” leading to unfavourable treatment is a consequence of disability;
- h. it does not matter precisely which order these questions are addressed. Depending on the facts the Tribunal might ask why the Respondent treated the Claimant in an unfavourable way in order to answer the question whether it was because of “something arising in consequence of the Claimant’s disability”. Alternatively, it might ask whether the disability has a particular consequence for a Claimant that leads to “something” that caused the unfavourable treatment.

81. When considering justification, the role of the Tribunal is to reach its own judgment, based on a critical evaluation, balancing the discriminatory effect of the act with the business/organisational needs of the Respondent.

Reasonable adjustments

82. To trigger the Respondent's obligation to make reasonable adjustments, it must know or ought reasonably to have known of the disability and substantial disadvantage the Claimant would experience.

Harassment

83. Harassment claims can succeed, regardless of the alleged harasser's intention, in circumstances where there is unwanted conduct that relates to a relevant protected characteristic that has the proscribed effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment. The Tribunal must consider the subjective perception of the Claimant, the other circumstances of the case and, objectively, whether it is reasonable for the conduct complained of to have had the effect of which the Claimant complains.

Conclusion

Discrimination arising from disability – issuance of performance improvement plan (PIP)

84. The Tribunal concludes that the issuance of the PIP is capable of amounting to unfavourable treatment. Whilst it is not a disciplinary action in of itself, its purpose is to identify areas where performance is lacking. The fact of the PIP combined with the manner in which this particular PIP was issued, in breach of the Respondent's policy, amounts to unfavourable treatment.
85. The Tribunal concludes that Ms Wilber's perception of the speed with which the Claimant worked had a significant, and more than trivial, influence on her decision to issue the PIP. The manner in which the PIP was issued, as a pre-completed form, did not allow the Claimant opportunity to comment on its content before it was completed. Regardless of whether a reasonably lengthy meeting was held with the Claimant to discuss the content of the PIP, completing it in advance dictated the parameters of the discussion.
86. At the time that the PIP was issued Ms Wilber was aware of the Claimant's scoliosis, that the Claimant was experiencing pain, sought a workstation assessment, wanted to move around more and reinstatement of breaks [106-108]. The Tribunal concludes that the speed with which the Claimant could carry out her work was something that arose in consequence of her disability. The pain and stiffness experienced by the Claimant, particularly following the removal of her breaks which allowed her to manage her symptoms, affected the speed with which she could complete the work.
87. The focus for the Tribunal's is whether the Respondent adopted a proportionate means of achieving a legitimate aim of requiring employees to perform to a required standard and/or assisting them to do so.
88. The Tribunal does not consider that the Respondent can justify the issuance of the PIP at this point in time or in the manner it was issued for the following reasons. The Respondent in its internal grievance

procedures found fault in the issuing of the PIP. The ACPT role had developed into more of a leadership role and the Respondent relied on e-learning to train its employees. The Claimant had not been permitted necessary time within the working day to complete the e-learning for the requirements of the updated role. The PIP required the Claimant to work to the requirements of the new role without proper training. At the point in time the PIP was issued the Holyhead branch had come through a period without any manager; Ms Wilber commenting that the branch was in a “mess” when she started. The branch had failed audits and was categorised as high-risk; it had new staff that required training, which task fell to the Claimant. It would have been appropriate to wait for new staff to settle in and become familiar with their roles properly before issuing the PIP. The Tribunal considers, below, that the Respondent failed to make reasonable adjustments to the Claimant’s workload and by removing tea breaks; these are matters that should have been addressed prior to implementation of performance measures. Supporting the Claimant with adjustments would likely have alleviated her pain and improved the speed with which she completed tasks.

89. The complaint of discrimination arising from disability is upheld.

Reasonable adjustments

90. The Tribunal concludes that the Respondent was aware or ought reasonably to have been aware that the Claimant was a disabled person and would experience substantial disadvantage at the material time.

91. The comment in the OH report with regard to the need for adjustments [100], cannot be read in isolation; Ms Wilber was aware of the Claimant’s back problems and her request for assessment of her workstation [101].

Tea breaks

92. The Respondent accepts that it applied a PCP from April 2016 of requiring staff to start 30 minutes later or leave 30 minutes earlier instead of taking mid-morning and mid-afternoon tea breaks of 15 minutes each.

93. It is accepted that the Claimant experienced substantial disadvantage, in that continuous working without breaks caused pain and discomfort to her. This disadvantage would not have been experienced by a non-disabled employee.

94. The Claimant was explicit in the return to work meeting that she required breaks [106]. During the course of the grievance, whilst the Claimant remained absent from work on sickness absence, the Respondent confirmed that on her return to work that tea breaks would be reinstated, demonstrating that they could be accommodated.

95. Taking into account the evidence in the Claimant’s impact statement, the Tribunal concludes that the breaks were a reasonable adjustment, which would have been effective in maintaining the Claimant’s attendance and performance in work and should have been made available to the Claimant while she remained in the workplace.

96. The complaint of failure to make reasonable adjustments in respect of offering breaks is upheld.

Additional 2 hours

97. With regard to the complaint that the Claimant should have been permitted to work an additional two paid hours per week, the Tribunal does not consider that this adjustment would have avoided the substantial disadvantage identified – that continuous work without breaks caused pain and suffering. The Claimant should have been paid for hours that she worked but that is a separate issue. Working additional paid time would not have avoided disadvantage.

98. The complaint is dismissed.

Absence management procedure

99. The Respondent accepts that it applied the PCP of the absence management procedure and that the Claimant experienced substantial disadvantage as she would be more susceptible to formal action under the absence procedure.

100. The Claimant had approval to attend the two-week residential physiotherapy course in the Lake District. This course was explicitly linked to her scoliosis. Ms Wilber sought advice as to how the absence should be recorded whilst the Claimant was away and subsequently reported that it would be recorded as sickness absence.

101. The absence related to her medical condition, and in circumstances where the Respondent ought to have known this was a disability, the Tribunal concludes that it would have been a reasonable adjustment to record the absence as disability related. Ms Wilber was aware of the substantial disadvantage as this is implicit in her giving the informal warning about triggers. The absence should have been recorded in a way that did not trigger the absence management procedure to progress management of the Claimant's absence toward the formal warning stages.

102. The complaint of failure to make reasonable adjustments in respect of discounting disability-related absence is upheld.

103. As regards the issuance of an absence warning the Tribunal refers to its findings above; Ms Wilber did not issue a formal warning to the Claimant. The Claimant was not formally progressed along the process at this stage. Accordingly, there was no failure to make a reasonable adjustment and the complaint is dismissed.

Workload between June and September 2016

104. The Claimant was allocated additional work during this period as the Tribunal concluded above.

105. Increased volume of work without breaks led to the substantial

disadvantage of pain and discomfort due to continuous working without breaks. Ms Wilber was aware of the impact of additional work; she knew the Claimant was working additional hours and had assured her that her contract would be increased to 30 hours, although this was not actioned.

106. The Tribunal concludes that it would have been a reasonable adjustment, effective in avoiding disadvantage, to ensure the Claimant was allocated a manageable workload.

107. The complaint of failure to make reasonable adjustment to ensure the Claimant had a manageable workload is upheld.

108. For the same reasons as given above the Tribunal does not consider that having an additional two hours of paid work a week would alleviate the particular substantial disadvantage complained of and that complaint is dismissed.

Workplace risk assessment

109. The Respondent did not arrange a workplace risk assessment despite the request by the Claimant and recommendations of occupational health in 2016 and 2017.

110. The Tribunal concludes that the carrying out of a risk assessment cannot be considered an adjustment in itself. It is a precursor to considering what adjustments could be made. Whilst it is good practice and an assessment should have been carried out for Claimant, the assessment itself would not have had the capacity to remove or reduce substantial disadvantage.

111. The complaint is dismissed.

Harassment

112. For a complaint of harassment to succeed the conduct complained of must be related to the relevant protected characteristic; in this case the Claimant's scoliosis.

113. The Tribunal considers that the conduct complained of in the following three complaints does not relate to the Claimant's disability and on that basis must be dismissed.

Comment by Ms Wilber in June 2016

114. The Claimant complains that Ms Wilber said "look up professionalism and be it, stay 100% close to Amy".

115. These words do not explicitly or impliedly reference the Claimant's disability.

116. In any event, on an objective assessment, the words cannot be considered offensive in the manner required for harassment.

Allocation of additional work June to September 2016

117. To an extent additional work was allocated to all staff (eg targets for repeat prescriptions) but the Claimant carried out additional work specific to her role; training new staff and supporting the new pharmacist.
118. The Claimant has not made a positive case as to why the allocation of additional work related to her disability; the Tribunal finds no express or implied connection to the protected characteristic in question.

Comment by Ms Wilber in September 2016 (e-learning)

119. Ms Wilber made the comment to the Claimant but the Tribunal concludes that the comment did not relate to her disability. A comment about controlling emotions has no apparent or implied connection to scoliosis.

PIP

120. The issuance of the PIP was for something arising from disability; so there is a potential link to disability. However, the Tribunal concludes that there is no overt relation to scoliosis itself, rather the PIP related to a symptom of scoliosis.
121. The PIP was unwanted conduct but cannot objectively be considered to produce the effect of creating a prohibited environment. We do not consider that was Ms Wilber's purpose and, even if it had that effect, it was not related to disability in the offensive or upsetting manner required for a complaint of harassment.

Constructive unfair dismissal

122. Breaches of trust and confidence are fundamental breaches of contract. The Tribunal's findings that the Claimant was subject to acts of discrimination go to the heart of the implied term of trust and confidence. The removal of tea breaks without consultation was particularly detrimental to the Claimant's ability to manage her chronic pain in the workplace. This situation was compounded by the increasing workload over the ensuing months and the change to the Claimant's working pattern; these factors led to the Claimant working hours in excess of her 28 contracted hours per week and coming into work on days off in order to catch up, a fact of which the Respondent was aware. The Claimant was an hourly paid employee and should have been paid for the work that she did; the removal of her tea breaks not only affected her ability to manage her pain but also led to her working additional hours without remuneration or time off in lieu.
123. The attempts to encourage the Claimant to step up to the new expectations for the ACPT role were unreasonable, in circumstances where inadequate facility time was made for her to complete the required e-learning. The situation was compounded by the fact that she was being required to train and support various members of new staff.

124. The Claimant experienced lack of support as she requested an assessment of her workstation from her manager on more than one occasion, and repeated her requests to OH, but the assessment was never actioned. Upon her return to work after the residential course, the Claimant was specific with Ms Wilber about what adjustments she required to enable her to manage in work but these modest requests, to move around more and for breaks, were not actioned either.
125. It is unsurprising that the Claimant perceived that she was being treated unfairly when she was informed that her authorised absence at the residential course would be treated as sickness absence, when she had not been informed of this fact in advance. Although she was not issued with a formal warning under process; Ms Wilber did informally warn the Claimant about the absence triggers which was not appropriate in the circumstances and contributed to the breach of the implied term.
126. The timing of the Claimant being told that she would be subject to a PIP just before a holiday and then the issuance of the PIP just before another holiday, is of concern. Holding these discussions just prior to leave had the effect of ruining the Claimant's holiday; and in respect of the issuance of the PIP the Claimant became so upset that she could not attend her holiday and was signed off sick by her doctor instead.
127. As for the grievance, the Tribunal finds that there was some mutual confusion between the parties as to the purpose of meetings scheduled whilst the Claimant was on sickness absence and some delay was caused by difficulty in identifying joint availability for meetings. However, the Tribunal concludes that the Respondent did not deal with the grievance with due speed. The Claimant made it clear in her correspondence that she wanted the grievance dealt with and used the contact meeting with Mr Mulholland to air the issues of complaint, as a grievance meeting had not been scheduled. There was notable delay by Mr Evans in scheduling the grievance, it is not clear why a grievance officer could not have been identified earlier; when he was absent on holiday nothing happened to progress matters. This delay appears unjustified and unnecessary in circumstances where Mr Evans was not the individual assigned to deal with the grievance.
128. The Tribunal concludes that the scope of the investigation was not sufficiently wide. The investigation meetings by telephone were only held with management (Ms Wilber, Ms Davies and Mr Evans); Ms Hodnett did not investigate matters with other staff at Holyhead who could have shed light on workload. The narrow scope of investigation hampered Ms Hodnett's ability to take a balanced view of the allegation made by the Claimant. Seeking the views of management only was artificially narrow; Ms Wilber, as the manager complained about, was unlikely to concede all complaints or be able to give a sufficiently objective view.
129. The Claimant agreed to an appeal with Ms Creighton, although she had not requested an appeal. The scope of the appeal investigation was also insufficiently wide to rectify the defect in the grievance investigation. Ms Creighton elected only to speak with Ms Davies again. The data upon which she relied to suggest there had been a drop in workload was not

representative (it was not the period complained about and included two weeks of the Claimant's absence).

130. The failure to properly deal with the Claimant's grievance, including the delay, is sufficient to amount to last straw in the circumstances.
131. Objectively viewed the Tribunal considers that the Respondent's actions, over a period of time culminating in the grievance outcome and appeal amount to a breach of the implied term of trust and confidence.
132. The Tribunal finds that the Claimant's reason for resignation in her letters of 2 August and 14 August 2017 demonstrate that the breach of contract was the effective cause for the Claimant's resignation.
133. In circumstances where the Claimant has such significant length of service, 34 years, she considered her position relatively swiftly over the period of one month. The Tribunal considers the resignation timely; there was no affirmation of contract. This is particularly so as the Claimant was absent on sick leave.
134. The claim of unfair constructive dismissal is upheld.

Jurisdiction

135. The Claimant did not made submissions that there was a continuing act; she concedes on their face that complaints about acts prior to 25 July 2017 are out of time. The dismissal claim is brought in time. The Claimant sought the exercise of the Tribunal's discretion to extend jurisdiction on a just and equitable basis.
136. In reaching the decision to exercise discretion in the Claimant's favour, the Tribunal was persuaded by the fact that the parties would be required to present evidence of all matters relied upon as disability discrimination in the unfair dismissal claim in any event. The Respondent has not been prejudiced in circumstances where Ms Wilber has been able to attend to give evidence and the matters complained of were recorded contemporaneously in the grievance letter. The Respondent had the opportunity to explore concerns whilst investigating the grievance.
137. The Claimant has 34 years' service; her work for Respondent was her whole career. The Claimant sought to address her concerns internally by raising a grievance. Although the fact that an internal process is ongoing is not necessarily a decisive factor, the Tribunal considers it relevant in the circumstances of this case where the Claimant had to wait for such a long period of time for her complaints to be investigated and dealt with.
138. In so far as complaints of discrimination are brought outside the usual time limit, the Tribunal extends jurisdiction to consider them.

139. A remedy hearing will be listed in due course.

Employment Judge S Davies

Date 4 June 2019

JUDGMENT SENT TO THE PARTIES ON

.....5 June 2019.....

.....
FOR THE TRIBUNAL OFFICE

ANNEXE A

AGREED LIST OF ISSUES

Jurisdiction

1. Do the acts and omissions set out in the Claimants Grounds of Complaint amount to conduct extending over a period within the meaning of section 123(3)(a) Equality Act 2010?
2. Further, or in the alternative, is it just and equitable in the circumstances for the tribunal to extend time for submission of the Claimant's claim under section 123 (1) (b) in respect of any acts or omissions that occurred more than three months before the Claimant submitted this claim.

Disability- Section 6, Equality Act 2010

3. Does the Claimant's scoliosis of the spine amount to a physical or mental impairment which has a substantial and long term adverse effect on her ability to carry out normal day to day activities? [The Respondent accepts that the Claimant is disabled]

Discrimination arising from disability- Section 15(1), Equality Act 2010

4. Did the Respondent treat the Claimant unfavorably in that:
 - a) On 3 September 2016 the Claimant was put on a performance improvement plan. The issuing of the performance approval plan arises from her disability because the claimant was considered to be slow in her work by Amy Wilbur and this was because the Claimant was contending with back pain and discomfort due to her disability.
5. Was the Respondent aware, or reasonably ought to have been aware that the Claimant was disabled?
6. Was the Claimant treated unfavorably because of something arising in consequence of her disability?
7. If so, can the Respondent show that their treatment of the Claimant was a proportionate means of achieving a legitimate aim?
8. the Respondent relies on the following legitimate aim:

To ensure that we [the Respondent] employ employees that perform to the required standard; and/or assist those employees, who are not performing to the required standard, to improve.

Duty to make reasonable adjustments- Section 20(3), Equality Act 2010

9. Did the Respondent apply a provision, criterion or practice (“PCP”) which put the Claimant at a substantial disadvantage in comparison to persons who are not disabled
10. If so, did that PCP put the Claimant at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled?
11. Was the Respondent aware, or ought it to have reasonably been aware, that the Claimant was disabled at the material time?
12. If so, did the Respondent take such steps as were reasonable to avoid that disadvantage?
13. The Claimant claims:
 - a. The Respondent applied a PCP of requiring employees to come in thirty minutes later or leave thirty minutes earlier in lieu of breaks / not allowing tea breaks during the working day. The Claimant claims it would have been a reasonable adjustment for the Respondent to:
 - i. allow her to have two fifteen minute tea breaks during the day and/or
 - ii. allow her to work an additional two paid hours a week to better manage her workload.
 - b. The Respondent applied a PCP of their absence management procedure. The Claimant claims that it would have been a reasonable adjustment for the Respondent to discount a disability related absence the Claimant incurred immediately after 3 July 2016 and not issue an absence warning at that time.
 - c. The Respondent applied a PCP of allocating additional work between June to September 2016. The Claimant claims it would have been a reasonable adjustment for the Respondent to:
 - i. Ensure she had a manageable caseload; and/or
 - ii. allow her to work an additional two paid hours a week to better manage this additional workload.
 - d. The Respondent applied a PCP of not carrying out a workplace risk assessment following recommendations by occupational health on 27 June 2016 and 17 February 2017. The Claimant claims it would have been a reasonable adjustment to carry out this workplace risk assessment
14. The substantial disadvantage relied upon in regard to the above PCP’s are:
 - 12 a)

Continuous working (without breaks) caused pain and discomfort to the Claimant where as a non-disabled employee would not suffer from such pain or discomfort.

12 b)

The Claimant's disability meant that she was more likely to have sickness absence than a non-disabled comparator and she would therefore be more likely to be given a warning and/or have absences recorded under the Respondent's absence management procedure.

12 c)

Continuous working (without breaks) caused pain and discomfort to the Claimant where as a non-disabled employee would not suffer from such pain or discomfort.

12 d)

The lack of assessment meant that reasonable adjustments that the Claimant required (which a non-disabled would not require) were not identified or put into place causing the Claimant difficulty in work.

Harassment- Section 26 (1), Equality Act 2010

15. Did the Respondent engage in unwanted conduct related to the Claimant's disability in that:

- a) The Comment made by Amy Wilber in June 2016 when the Claimant returned to work following a period of disability related absence, "look up professionalism and be it, stay 100% close to Amy";
- b) The Claimant was unfairly allocated additional work by Amy Wilber from June to September 2016;
- c) Following a discussion with Amy Wilber on 3 September 2017 in which the Claimant declined a roving ACPT role, the Claimant was put on a performance improvement plan; and
- d) Following the above discussion on 3 September 2017 Amy Wilber commented to the Claimant as she left the room, "Here is a good package for you – how to control your emotions".

16. If so, did that conduct violate the Claimants dignity or create an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant.

Constructive Dismissal- Section 95 (1) (C) Employment Rights Act 1996

17. Does the conduct of the Respondent as detailed in the Claimants Grounds of Complaint amount to a fundamental breach of the implied term of trust and confidence?

18. The Claimant claims that the following actions together amount to a fundamental breach of the implied term of trust and confidence:

- a. The removal of tea breaks;
- b. The Respondent's failure to conduct a workplace risk assessment;
- c. The Respondent's absence warning given after the Claimant returned from a period of disability related absence on 3 July 2016;
- d. The allocation of additional duties between June and September 2016;
- e. Amy Wilbur placing the Claimant on a performance improvement plan after she refused the roving ACPT role;
- f. The Respondent's refusal to allow the Claimant to work an additional two hours per week to manage these additional duties;
- g. The comments made by Amy Wilbur as set out in paragraphs 13(a) and (d) above;
- h. The Respondent's delays in dealing with her grievance;
- i. The Respondent's failure to properly investigate her grievance;
- j. The Respondent's disability discrimination as set out in paragraphs 4 - 14 above;

19. Item i. above was the 'last straw'. This is also set out at page 18 of the bundle (page 5, paragraph G) of the Grounds of Claim.

20. If so, was the Claimant entitled to terminate her employment contract without notice?